

§ 89.130

40 CFR Ch. I (7-1-06 Edition)

(d) On admission to any such facility referred to in paragraph (c) of this section, any EPA enforcement officer or EPA authorized representative shall be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(2) To inspect and make copies of any such records, documents or designs; and

(3) To inspect and photograph any part or aspect of any such new engines and any component used in the assembly thereof that are reasonably related to the purpose of his or her entry.

(e) Any EPA enforcement officer or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he or she may request to help the enforcement officer or authorized representative discharge any function listed in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(1) Reasonable assistance includes, but is not limited to, clerical, copying, interpretation and translation services; the making available on request of personnel of the facility being inspected during their working hours to inform the EPA enforcement officer or EPA authorized representative of how the facility operates and to answer the officer's questions; and the performance on request of emission tests on any engine which is being, has been, or will be used for certification testing. Such tests shall be nondestructive, but may require appropriate service accumulation.

(2) A manufacturer may be compelled to cause any employee at a facility being inspected to appear before an EPA enforcement officer or EPA authorized representative. The request for the employee's appearance shall be in writing, signed by the Assistant Administrator for Air and Radiation, and served on the manufacturer. Any employee who has been instructed by the manufacturer to appear will be entitled

to be accompanied, represented, and advised by counsel.

(f) The duty to admit or cause to be admitted any EPA enforcement officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to do what is necessary to ensure the accuracy of data generated at a facility, no informed judgment that an engine is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(g) Any entry without 24 hours prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Enforcement.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.130 Rebuild practices.

The provisions of 40 CFR 1068.120 apply to rebuilding of engines subject to the requirements of this part 89, except Tier 1 engines rated at or above 37 kW.

[70 FR 40445, July 13, 2005]

Subpart C—Averaging, Banking, and Trading Provisions

§ 89.201 Applicability.

Nonroad compression-ignition engines subject to the provisions of subpart A of this part are eligible to participate in the averaging, banking, and trading program described in this subpart.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.202 Definitions.

The definitions in subpart A of this part apply to this subpart. The following definitions also apply to this subpart:

Averaging for nonroad engines means the exchange of emission credits among engine families within a given manufacturer's product line.

Banking means the retention of nonroad engine emission credits by the manufacturer generating the emission credits for use in future model year averaging or trading as permitted by these regulations.

Emission credits represent the amount of emission reduction or exceedance, by a nonroad engine family, below or above the emission standard, respectively. Emission reductions below the standard are considered as "positive credits," while emission exceedances above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected applicable production/sales volume of the engine family. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual applicable production/sales volume as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end-of-year reports or any subsequent audit action(s) uncovers problems or errors.

Trading means the exchange of nonroad engine emission credits between manufacturers.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56995, Oct. 23, 1998]

§ 89.203 General provisions.

(a) The averaging, banking, and trading programs for NO_x, NMHC+NO_x, and PM emissions from eligible nonroad engines are described in this subpart. Participation in these programs is voluntary.

(b) *Requirements for Tier 1 engines rated at or above 37 kW.* (1) A nonroad engine family is eligible to participate in the averaging, banking, and trading program for NO_x emissions and the banking and trading program for PM emissions if it is subject to regulation under subpart B of this part with certain exceptions specified in paragraph (b)(2) of this section. No averaging, banking, and trading program is available for meeting the Tier 1 HC, CO, or

smoke emission standards specified in subpart B of this part. No averaging program is available for meeting the Tier 1 PM emission standards specified in subpart B of this part.

(2) Nonroad engines may not participate in the averaging, banking, and trading programs if they are exported or are sold as Blue Sky Series engines as described in § 89.112(f). Nonroad engines certified on a special test procedure under § 89.114(a), may not participate in the averaging, banking and trading programs unless the manufacturer has requested that the engines be included in the averaging, banking, and trading programs at the time the request for the special test procedure is made and has been granted approval by the Administrator for inclusion in the averaging, banking, and trading programs.

(3) A manufacturer may certify one or more nonroad engine families at NO_x family emission limits (FELs) above or below the Tier 1 NO_x emission standard, provided the summation of the manufacturer's projected balance of all NO_x credit transactions in a given model year is greater than or equal to zero, as determined under § 89.207(a). A manufacturer may certify one or more nonroad engine families at PM FELs below the Tier 2 PM emission standard that will be applicable to those engine families.

(i) FELs for NO_x may not exceed the Tier 1 upper limit specified in § 89.112(d).

(ii) An engine family certified to an FEL is subject to all provisions specified in this part, except that the applicable FEL replaces the emission standard for the family participating in the averaging, banking, and trading program.

(iii) A manufacturer of an engine family with a NO_x FEL exceeding the Tier 1 NO_x emission standard must obtain NO_x emission credits sufficient to address the associated credit shortfall via averaging, banking, or trading.

(iv) An engine family with a NO_x FEL below the applicable Tier 1 standard may generate emission credits for averaging, banking, trading, or a combination thereof. An engine family